

## REMARKS

### Introduction

Claims 15-33 are pending in the present application, with Claims 23-31 having been withdrawn from consideration.

Claim 17 has been rewritten in independent form and the objections to subclaims 20 and 21 (see below) have been corrected. Thus, applicants respectfully submit that Claims 17-21 are now in condition for allowance.

### Claim Rejections Under 35 U.S.C. § 112

Claims 15-21, 32, and 33 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Corrections to the claims have been made as follows:

Claim 15 has been revised at line 4 to specify a first conveyor run so as to correct the lack of a positive antecedent. Also, the semicolon after "portions" has been deleted.

Claim 16 – the vagueness of "a first horizontal conveyor run portions" has been corrected.

Claim 20 – the indefiniteness of "a vacuum source" has been corrected. Also, a lack of a positive antecedent basis for "the second diagonal conveyor run portion" has been corrected.

Claim 21 – the lack of a positive antecedent basis for "the second diagonal conveyor run portion" has been corrected.

Claim 32 – the lack of a positive antecedent basis for "the underside of the foodstuff portions" has been correct. Also, at line 7, the lack of a positive antecedent basis for "the infeeding end" has been corrected. Further, in

line 11, the lack of a positive antecedent basis for the "upper side of the foodstuff portions" has been corrected.

Claim 33 – the lack of a positive antecedent basis for a "second conveyor belt" has been corrected.

Claims 15, 16, 22, 32, and 33 Are No Longer Obvious Under 35 U.S.C. § 103(a)

Claims 15, 16, 22, 32, and 33 have been rejected as obvious over Tobey et al., U.S. Patent No. 3,850,088, in view of Chenery, U.S. Patent No. 4,246,837 and Busseniers, U.S. Patent No. 4,442,657. Of these references, Tobey is primarily relied upon. In this regard, the Office Action opines that Tobey discloses almost every structural limitation of the claimed invention. Independent Claims 15 and 32 have been amended to further clarify the present invention and more clearly distinguish the present invention from the cited references, including Tobey.

Tobey discloses an apparatus to slice a cake or similar food product, then separate the two slices from each other, thereafter apply a filling between the adjacent faces of the two slices, and finally, "reassemble" the two slices and the filling to make a sandwich-type composition. As shown in the figures of Tobey, whole cake products 10 are fed down conveyor 11 to be received between an upper vacuum chamber assembly 18 and a lower vacuum chamber assembly 19, each having perforated, endless driven belts 25 and 35, respectively. The lower surface of the upper chamber 18 is substantially planar, but has a central concave portion in registry with a corresponding concave portion in the lower chamber assembly 19. A filling deposit nozzle 20, in the form of a pipe with outlet holes in it) extends transversely to the upper and lower chambers in registry with the concave portions of the upper and lower chambers. A bandsaw 23 extends across a gap formed between the upper and lower chamber assemblies, upstream from the filler nozzle 20.

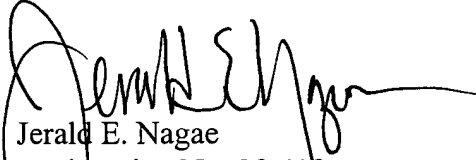
In operation, the cake products 10 are advanced forwardly by the belts 25 and 35 of the upper and lower chamber assemblies 18 and 19. When the cake product is sliced in half by knife 23, the upper cake half attaches by the upper belt and the lower cake half attaches to the lower belt. When the cake products reach the concave portions of the upper and lower housings, they separate from each other to provide clearance for nozzle 20, which applies a filling 14 between the cake halves. Thereafter, the cake halves continue along the upper and lower chamber assemblies, being carried by the belts 25 and 35.

It is clear that Tobey does not have the present invention in mind. In the present invention, a first and second conveyor cooperate with each other with an adjustable cutting device to trim foodstuffs to a desired thickness. Accordingly, applicants respectfully submit that the claims of the present invention as submitted on October 20, 2003, are patentable over Tobey and the other references being relied upon by the Examiner. Nonetheless, Claims 15 and 32 have been amended to clarify that the second conveyor carries foodstuff portions after the foodstuff portions to be cut depart from the first conveyor. Also, the claims have been amended to specify that the cutting device is positioned along the second conveyor downstream from the departure location of the first conveyor. Accordingly, the foodstuff portions are trimmed as they are carried by the second conveyor only, being no longer carried by the first conveyor. In Tobey, cakes 10 are cut as they are carried by both the upper and lower conveyors 25 and 35. Moreover, in Tobey, the upper and lower conveyors 25 and 35 are co-existent along their lengths. Claims 15 and 32, on the other hand, specify that the second conveyor run extends along the first conveyor run in overlapping relationship with the first conveyor at a location downstream from the infeed portion of the first conveyor. This feature also distinguishes Claims 15 and 32 from Tobey.

In the present invention, the active presence of the first conveyor at the location of the cutting device would interfere with the operation of the cutting device. On the other hand, the location of the second conveyor 35 in Tobey at the location of knife band 23 is critical. The present invention, as specified in Claims 15 and 32, would not operate properly with the structure of Tobey. For these, and the foregoing reasons, applicants respectfully submit that neither Tobey alone, nor in hypothetical combination with Chenery and Busseniers, renders the present invention obvious. Accordingly, applicants respectfully request reconsideration of the present application and allowance of the claims as amended.

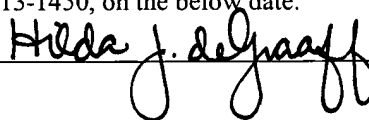
Respectfully submitted,

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